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**UNITED STATES DISTRICT COURT
CENTRAL DISTRICT OF CALIFORNIA**

CIVIL MINUTES - GENERAL

Case No.	<u>CV 10-0013 GAF (PLAx)</u>	Date	<u>December 21, 2010</u>
Title	<u>Roma Bikini Corp. v. Let It B Known Records et al</u>		

Present: The
Honorable

GARY ALLEN FEESS

Renee Fisher	None	N/A
Deputy Clerk	Court Reporter / Recorder	Tape No.
Attorneys Present for Plaintiffs:		Attorneys Present for Defendants:
None		None

Proceedings: **(In Chambers)**

ORDER TO SHOW CAUSE RE: DISMISSAL FOR LACK OF PROSECUTION

On August 2, 2010, this Court granted Plaintiff Roma Costume, Inc. (“Plaintiff”) leave to file a second amended complaint (“SAC”) and ordered Plaintiff to serve that complaint no later than August 31, 2010. (Docket No. 11, 8/22/10 Order at 2.) On August 9, 2010, Plaintiff filed its SAC, which named Pamela Moses (“Moses”) as a defendant for the first time. (Docket No. 12.) As of November 19, 2010, this Court had not yet received a proof of service. The Court accordingly issued an order to show cause why this case should not be dismissed for lack of prosecution. (Docket No. 13, 11/19/10 Order.)

Plaintiff has responded to this order. (Docket No. 15.) In its response, Plaintiff indicates that it unsuccessfully tried to personally serve Moses twice before the Court’s August 31, 2010, deadline. (Docket No. 15, Decl. of Erica L. Allen, Ex. A.) In addition, Plaintiff has since unsuccessfully attempted personal service thirteen more times. (*Id.*) Plaintiff further indicates that it has sent Moses, via certified mail, a packet including the Summons and Second Amended Complaint on November 3, 2010, and maintains that this constitutes adequate service under Federal Rule of Civil Procedure 4(e)(1) and California Code of Civil Procedure section 415.40. For the reasons set forth in the Court’s accompanying Order Re: Request for Entry of Default, this service was not effective.

Under Federal Rule of Civil Procedure 4(m), “If a defendant is not served within 120 days after the complaint is filed, the court—on motion or on its own after notice to the plaintiff—must dismiss the action without prejudice against that defendant or order that service

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be made within a specified time. But if the plaintiff shows good cause for the failure, the court must extend the time for service for an appropriate period.” Fed. R. Civ. P. 4(m). Here, the Court’s August 31, 2010, deadline for service has passed. In addition, more than 120 days have passed since the filing of the second amended complaint. However, the Court acknowledges that Plaintiff has repeatedly attempted to serve Moses, but with no success. The Court will therefore give Plaintiff one more opportunity to properly serve Moses. Plaintiff is hereby **ORDERED** to effect proper service on Moses, and to file proof of such service with this Court, **by no later than January 18, 2011**. Failure to file proof of service by the deadline will be deemed consent to dismissal of the action for failure to prosecute. The Court’s previous order to show cause issued on November 19, 2010, is hereby **VACATED**.

IT IS SO ORDERED.